**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMMONS FOR JUDGMENT NO. 550 OF 2005

IN

SUIT NO.1818 OF 2005

Harvestdeal Securities Ltd., .. Plaintiffs.

vs.

Punjab National Bank. .. Defendants.

Mr. N. G. Thakkar, Sr. Adv. i/by RMG Law
for plaintiffs.

Mr. V. Y. Divekar i/by Prasanna Sarpotdar
for defendants.

**CORAM : S.U.KAMDAR, J.**

**DATE : 20th February, 2006.**

P.C.

. The present suit is filed for the recovery of a sum of Rs. 79,50,617.38 in respect of the fixed deposit amount lying deposited with the defendant bank. It is the case of the plaintiffs that the defendants had given the fixed deposit to the erstwhile company known as Nedungadi Bank Ltd., It is the further case of the plaintiffs that the said fixed deposit were given in respect of the bank guarantee obtained from the said Nedungadi Bank

Ltd,. The said bank guarantee has been duly discharged and a letter has been forwarded that the said bank guarantee has been discharged. The plaintiffs thereafter demanded refund of the money but the defendants did not refund the said amount covered by the said fixed deposit even though the said bank guarantees are duly discharged.

2. On demand of the said amount of refund on 29.6.2002 the defendants have by their letter claimed that the defendants are entitled to adjust the said bank guarantee against certain transactions which were entered into by and between the plaintiffs and the said Nedungadi Bank Ltd., in respect of the sale of the shares in the market. It is the case of the defendants that in respect of the said sale of the shares there was a delay in repayment to the defendants and thus the defendants are entitled to interest at the rate of 18% per annum. The defendants have claimed the said amount of interest and have sought to adjust the amount against the fixed deposit. According to the defendants after adjustment the defendants are still entitled to Rs. 77,96,251/- with further interest at the rate of 19.5% p.a.

3. In view of the said false adjustment effected by the defendants the plaintiff has filed the present suit and has taken out the present

summons for judgment. I have heard the learned counsel for the defendants. The first contention raised by the learned counsel for the defendants is that the suit is barred by law of limitation. It has been contended that the fixed deposit was due and payable sometime in or about 1.1.2001 where as the suit is filed only on 23.6.2005 and, therefore, the suit is barred by law of limitation. In my opinion the issue of limitation raised by the learned counsel for the defendants is totally baseless and without any merit. It is an admitted fact that the amount is lying in fixed deposits and fixed deposits are due and payable even after the date has become overdue. It is a continuous cause of action. It is only for the first time on 29.6.2002 the defendants sought to effect adjustments against the said fixed deposit and so called claim of interest in respect of the shares sold by the plaintiff, that the cause of action arose in favour of the defendant to file the present suit. Thus from the dated 29.6.2002 the suit is field within time. Apart therefrom by a letter dated 29.6.2002 the defendants have admitted that the plaintiffs have been getting interest on the said fixed deposit right upto 31.5.2002. Thus there is a part payment upto 31.5.2002 and therefore claim cannot be barred by Law of Limitation. In any event in my view once the cause of action arose on 29.6.2002 the question of the same being barred by

law of limitation does not arise.

4. Now turning to the next contention of the learned counsel for the defendants that the defendant bank has general lien and in exercise of the said general lien the defendants are entitled to adjust the said fixed deposit amount. The whole contention is baseless and without any merit. The general lien of the bank does not extend to any other transaction except the banking transaction. The transaction of the sale of the shares has nothing to do with any of the banking transaction by and between the plaintiff and the defendant bank. Furthermore, on merits, the defendants have admitted that there is no agreement to pay interest as claimed at the rate of 19.5% on the delayed payment in respect of the sale proceeds of the shares by the plaintiff. In absence of any such agreement, the question of claiming any interest amount and adjusting the same against against the plaintiff's deposit does not arise. In that light of the matter, I do not find any bonafide defence in the suit. However, with a view to give an opportunity to the defendants to defend the suit I direct the defendants to deposit a sum of Rs. 75 lacs in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to

deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

5. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.